SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1565

STATE OF IOWA,

Petitioner,

vs.

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor,

Respondent.

PETITIONER'S REPLY BRIEF

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INDEX

Page

DIVISION I 1

DIVISION II 4

CONCLUSION 4

AUTHORITIES

Cases:

Jarecki v. G.D. Searle & Co., (1960) 367 U.S. 303 2

Neal v. Clark, (1877), 95 U.S. 704 2

Porto Rico R. Light & Power Co. v. Mor.,
253 U.S. 345, 40 S.Ct. 516, 64 L.Ed. 944 3

U.S. v. Babbit, 1 Black 55, (1862) 3

U.S. v. Brandenburg, 144 F. 2d 656 (3rd Cir. 1944) 3

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Respondent, in his Brief In Opposition, relies upon the claim of "mootness" by the 1974 Amendments to the Fair Labor Standards Act.

Actually, the amendment in not re-defining "goods" and in not removing the exception within that definition strengthens, not weakens, Iowa's position.

I

The public agency who is the "ultimate consumer" under the exception within the definition of "goods" is still exempt. Thus, these questions are still before this Court.

None of the cases relied upon by Respondent are applied to Sovereign States whose employees are "handling, selling or otherwise working on" goods consumed by the State within the meaning of the definition of "goods".

Petitioner submits that the addition of the words "or materials" after the word "goods" adds nothing to extend coverage to the State of Iowa. Under the well-known doctrine of statutory construction *noscitur a sociis,* is "a word is known by the company it keeps" – *Jarecki v. G.D. Searle & Co.,* (1960), 367 U.S. 303. This is an ancient doctrine which is described in *Neal v. Clark,* (1877), 95 U.S. 704 at 708 as follows:

> "In Broom's Legal Maxims, p. 450, it is said: 'It is a rule laid down by Lord Bacon, that *copulatio verborum indicat acceptationem in eodem sensu,* – the coupling of words together shows that they are to be understood in the same sense. . . . In the construction of statutes, likewise, the rule *noscitur a sociis* is very frequently applied; the meaning of a word, and, consequently, the intention of the legislature, being ascertained by reference to the context, and by considering whether the word in question and the surrounding words are, in fact, *ejusdem generis,* and referable to the same subject-matter.' "

Because Congress did not delete the word "goods" in the opening sentence of Section 3(s) *"or otherwise* working on *goods or materials . . . and which . . .* " [Emphasis supplied.], Respondent is unable to take comfort by the 1974 Amendment's addition of the last sentence to Section 3(s)(4), reading:

> "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling *or otherwise* working on *goods or materials* that have been moved in or produced for commerce." [Emphasis supplied.]

By the Amendment, in both the opening sentence and the last sentence of §203 (s), Congress extended the coverage *only* to "non-ultimate consumer" factual situations.

In retaining the word "goods" in the "or otherwise" clause appearing both in the opening sentence of §203 (s) and in the last sentence added by the amendment, Congress still permits sovereign States an exemption in a factual setting as here.

This Court in *Porto Rico R. Light & Power Co. v. Mor.*, 253 U.S. 345, 40 S.Ct. 516, 64 L.Ed. 944, stated the general doctrine of statutory construction to be:

> "... When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all. United States v. Standard Brewery, 251 U.S. 210, 218, ante, 229, 234, 40 Sup. Ct. Rep. 139: Johnson v. Southern P. Co. 196 U.S. 1, 18, 19, 49 L. Ed. 363, 369, 370, 25 Sup. Ct. Rep. 158, 17 Am. Neg. Rep. 412, and cases cited."

Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections the word or phrase will not be restricted to its immediate antecedent, *U.S. v. Babbit*, 1 Black 55, 61, (1862); *U.S. v. Brandenburg*, 144 F.2d 656 (3rd Cir. 1944).

II

Respondent failed to meet head-on any constitutional questions raised including the crucial question of retroactive payments. And, in the Petition for Writ of Certiorari, the 1974 Amendment does not touch the retroactive aspect raised in the Petition for Certiorari.

That issue is also still before this court regarding the constitutional restriction upon Congress to interfere with current appropriations of a sovereign State and is of such gravity that this reason alone should be sufficient for granting the Writ.

CONCLUSION

In view of the 1974 Amendment to the Fair Labor Standards Act it is increasingly important that this court grant the Petition of Certiorari to clarify previous decisions and their implications. [Reasons for Granting Writ IV with citations -- p. 8 Petition for Writ]

Other reasons for granting the Writ are not solved by nor mooted by the 1974 Amendment [p. 7 Petition for Writ] and thus Petitioner respectfully requests this court to honor its request that a Writ of Certiorari be granted.

Respectfully submitted,

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